

GUIDELINES FOR THE MANAGEMENT OF STUDENT RECORDS

The Family Educational Rights and Privacy Act (FERPA) protects the privacy of families by insuring the confidentiality of information in education records that schools maintain about students. Three concepts—notification, disclosure, and informed consent—are fundamental to FERPA regulations.

Confidentiality provisions in the Individuals with Disabilities Education Act (IDEA 2004) incorporate FERPA provisions. However, the IDEA 2004 provisions go beyond FERPA. Therefore, this appendix has been prepared to assist districts in meeting confidentiality regulations from both FERPA and the IDEA 2004.

Section 1. Managing Student Records

A. Definitions and Abbreviations

1. **Disclosure:** Permitting access to or the release, transfer, or other communication of personally identifiable information contained in education records, to any party, by any means, including oral, written, or electronic.
2. **Education records:** Any recorded information including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, and microfiche that is:
 - a. directly related to a student; and
 - b. maintained by a district, an institution, or by a party acting for the district or institution.
3. **Adult student:** Under the IDEA 2004, an adult student is a student who is eligible for special education, is 18 years of age or older, and to whom special education rights have transferred.
4. **FERPA:** The Family Educational Rights and Privacy Act.
5. **GEPA:** The General Education Provisions Act.
6. **HIPAA:** Health Insurance Portability and Accountability Act
7. **Informed consent:** In general, a parent/adult student has the right to give or decline to approve a district's request to release records to another party. A parent's/adult student's agreement shall be based on an explanation of how, what information will be released, and how the information will be used.

8. **Notification:** A district's responsibility to inform the parent/adult student of the legal basis for compiling data and the circumstances under which records can be released or disclosed.
9. **Parent:** A parent of the student, including a biological or an adoptive parent, a legal guardian, or an individual acting as a parent in the absence of a parent. The term does not include state agency personnel if the student is a ward of the state.

B. Annual Notice to Parents/Adult Students about Confidentiality

Each district shall annually notify parents of students currently in attendance, or adult students currently in attendance, of their rights under FERPA. This annual notification includes parents of students with and without disabilities. The notification may be provided by any means that is likely to inform parents/adult students of the privacy protections under FERPA. A model notification of rights is included in this appendix.

Commonly Asked Questions:

1. What should be included in the annual notification?

The notice shall inform parents/adult students that they have the right to:

- a. inspect and review the student's education records;
- b. seek amendment of the student's education records if they believe them to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
- c. consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that FERPA authorizes disclosure without consent; and
- d. file a complaint alleging failures by the district to comply with the confidentiality requirements of FERPA and IDEA 2004.

The notice shall also include the procedures for exercising the right to inspect and review education records and for requesting amendment of the records. If the district has a policy of disclosing education records to school officials with a legitimate educational interest, the notice needs to state the criteria for determining who constitutes a school official and define a legitimate educational interest.

2. How does a district provide this annual notification to parents/adult students?

A district may provide this notice by any means that is reasonably likely to inform the parents/adult students of their rights. A few common ways districts have provided this annual notification include school handbooks for parents and students or newspaper publications. The notification requirement also means that parents/adult students who have a disability or who speak a primary language other than English will need to be effectively informed of the information provided in the annual notification. Methods for notifying these individuals may include providing alternative formats of a student handbook such as audiotape, Braille, computer diskette, large print, or translation into native languages.

C. The Data Collection Process

School personnel shall have information about a student if they are to make appropriate decisions about special education and support programs. Records will follow the student from the time he or she enters school until the student graduates or completes his or her education program. Decisions regarding who collects the data or how and why the data is collected takes careful consideration by the district.

Commonly Asked Questions:

1. Who develops the student's special education record?

Typically, office personnel of a school collect required demographic information through the enrollment process. Other school personnel contribute additional information as it becomes available. The student's special education case manager should organize all relevant data specific to special education in accordance with district guidelines and the IDEA 2004.

2. How are special education records secured?

All records need to be kept in locked files in the school or district that the student attends. An access log shall be attached to each file.

3. How many copies of the special education record should there be?

In addition to a master special education file maintained by the district or school, appropriate personnel may maintain permanent working files. The existence and location of all files shall be documented in each file.

4. Can parents/adult students review and inspect test protocols if they are a part of a student's record?

Yes. The Office of Special Education Program's (OSEP's) position is that it is "highly improbable" that test protocols meet the "sole possession" exception to prohibit

parent/adult student access. The basis of OSEP's position is that even though a protocol may be kept in the sole possession of the examiner, the information in it is discussed with other school personnel in programming or placement meetings. In other words, data on the protocol is part of the documentation that is used to establish special education eligibility. Also, any anecdotal information on protocols can support the interpretation of the results. Therefore, a parent/adult student has the right under FERPA and IDEA 2004 regulations to inspect and review protocols.

The right to inspect and review a student's record does not necessarily entitle the parent/adult student to a copy of the test protocol. Test publishers require districts to maintain the integrity and validity of tests. They allow parents/adult students to view the student's responses to test items, but only if the information is shared in the presence of a person qualified to explain the results and meaning of the various items and data contained in the protocol. The exception to providing a copy of the protocol is when the parent/adult student would otherwise be unable to exercise his or her right to inspect and review those records. An example of these circumstances might be when the parent/adult student lives at such a distance that inspection and review are not practical. Protocols can be kept in a separate file, but their existence and location shall be noted in the student's record.

The underlying argument by examiners and districts to prohibit parent/adult student access to protocols is the publisher's proprietary interest in the test items and answers and the publisher's ability to assure the validity of the test instrument. OSEP does not see it that way. OESP believes that a test protocol would not be an exception under FERPA and the IDEA 2004 when providing the test instrument would be the only way to meet the district's IDEA 2004 obligation to explain the test results to a parent/adult student.

OSEP has offered examiners an opinion that test instruments, test protocols, and interpretative materials that do not contain the student's name and are not kept by the examiner do not fall under FERPA's definition of education records. Thus, coding a test protocol by a letter or number known only to the test examiner and not otherwise revealing the student's identity may be a way to preserve the confidentiality of a protocol.

Another alternative is that examiners may wish to destroy, rather than maintain, protocols and interpretative materials after fully documenting the results and interpretations on the special education Eligibility Report.

5. Who is responsible for the accuracy of student records?

In general, educators collecting student information are ethically responsible for maintaining accurate records. A parent/adult student can challenge the accuracy of a record through the district procedures for requesting amendment of records.

6. Can social security numbers (SSN) be used to identify education records?

Yes. However, a district or institution cannot require students to provide social security numbers. It is important to inform parents/adult students of how the school or agency intends to use these numbers as well as the limits of their use.

D. Access to Student Records

A parent/adult student shall have the opportunity to inspect and review all education records associated with the special education services the student receives. In particular, the parent/adult student shall have access to records pertaining to the identification, evaluation, and educational placement of the student and the services received. However, it is important for schools to establish internal management procedures for verifying the authenticity of the request.

The IDEA 2004 requires a district to provide copies of certain information to the parent/adult student. The parent/adult student shall be given a copy of the *Eligibility Report* and any other eligibility documentation as well as any individualized education program (IEP) developed. Test protocols are not part of the *Eligibility Report* and should not be given to parents/adult students. The results of the test shall be documented on the *Eligibility Report* or on the individual report written by the professional administering the test.

Commonly Asked Questions:

1. Can students review their own records?

Yes, but only under certain circumstances. Under the IDEA 2004 and Idaho regulations, the right to review records transfers from the parent to the student once a student turns 18 years old unless the IEP team has determined that the student is unable to provide informed consent with respect to his or her educational program or the parent has obtained guardianship. Before age 18, students may not have access to their elementary or secondary school records unless they are emancipated minors or a parent wishes to review the records with his or her own child.

2. What are the access rights of emancipated minors?

Idaho law does not provide for the emancipation of minors. However, Idaho does recognize an emancipated minor who has the power and capacity of an adult as designated by a court in another state. An emancipated minor should be prepared to provide the district with the court document in order to obtain access to his or her own record. Also, in Idaho, students younger than age 18 who are married to an adult at least 18 years old are not emancipated minors. Instead, the spouse becomes the guardian of the student for legal matters. Therefore, the spouse has the access rights, but he or she can give consent for the student to review his or her own records. In such cases, school personnel are encouraged to work with the student by inviting the spouse to act as an advocate of the student when inspecting and reviewing records.

3. Can the custodial parent prevent a noncustodial parent from exercising his or her FERPA rights to access records?

No. FERPA rights are given to both parents. The school may assume that a parent has these rights unless it has evidence to the contrary. The school does not need the permission of the custodial parent to give the noncustodial parent access to records. However, the custodial parent can request in writing that the minor child's address be deleted from records to prohibit a noncustodial parent from having access to the address simply by inspecting the school records.

E. Disclosure/Transfer of Records

Districts are required to fully inform personnel who collect or use personally identifiable information about their responsibilities for implementing confidentiality provisions. The confidentiality of information shall be protected at collection, storage, disclosure, and destruction stages.

Parent/adult student consent is needed to disclose records unless the circumstances are specifically authorized by FERPA. Schools need to maintain records of disclosures, including the names of persons retrieving the records and the purpose for each disclosure. Documentation of denials of access to records or partially fulfilled requests should also be maintained. Before releasing records, district personnel should review the compiled information for accuracy and ensure it is within the scope authorized to be disclosed.

Recommended procedures for transferring records to another school are as follows:

- Step 1:** When a student withdraws from a classroom/school, all records should be sent to the records manager of that school or district to ensure that all records are centrally located. All information that is not an education record should be deleted by the teacher or related service provider prior to forwarding the file to the records manager.
- Step 2:** If a district has formally received a request for a student's record from another Idaho district, the records manager should electronically transmit or overnight mail the IEP and *Eligibility Report* within 2 days of the notification. The rest of the file may follow by U.S. mail as soon as possible. If originals are sent, the district shall maintain a copy for audit purposes.

If the district has formally received a request from an out-of-state school, forward copies or the original documents within 10 days of the request. If originals are sent, the district shall maintain a copy for audit purposes.

- Step 3:** When the school record contains information concerning violent or disruptive behavior or disciplinary action, this information will be contained in a sealed envelope, marked "Confidential Information" and addressed to the principal or other administrator of the school.

Step 4: The records manager shall document:

- a. the receipt of a formal request for records; and
- b. that specific records were forwarded to whom, when, and where.

Commonly Asked Questions:

1. Is written parent/adult student consent required for the education records to be released to any other district?

No, written consent is not required to send records to another school, school system, or educational institution in which the student intends to enroll. The district should automatically forward education records to other schools or districts within or outside the state as soon as the district receives verification of student enrollment in a different school system. However, the IDEA 2004 requires that any disclosure of records to other agencies be for the purpose of meeting IDEA 2004 requirements.

2. Should third party reports be included in the file that is forwarded to another school?

It depends on the circumstances. All reports that are part of a student's file in a school system should be forwarded. When a third party report has been released to a district by consent of the parent/adult student for the specific purpose of determining special education eligibility, placement, or FAPE, the report becomes a part of the file and should be forwarded.

When the district receives documents from non education agencies stating that they cannot be released to others or even the parent/adult student, the district should return the documents to the originator. These documents do not become part of the student's file.

3. What kind of information can be given over the telephone or in person to the receiving school or district?

Any information relevant to the student's IEP can be released over the telephone to the school requesting release of records. The district should document the telephone call and attempt verification of the student's intent to enroll.

4. Do you need consent to share information with law enforcement authorities or probation officers?

Unless there is a court order or subpoena allowing disclosure of the student's education record, school officials should obtain consent to release information to law enforcement authorities. Sample court orders are included in this appendix. However, it should be noted that nothing in FERPA prevents a school official from disclosing to local law enforcement authorities information that is based on that official's personal knowledge

or observation and is not from an education record. For instance, if a principal were to observe that a student is involved in a gang, FERPA would not prevent the principal from disclosing or reporting this information.

5. Can student records be transmitted electronically via the Internet or fax?

The law requires districts to prevent the unauthorized release of education records. Thus, when student records are transmitted electronically, confidentiality shall be protected both by the sender and receiver of information. Procedures need to be established and staff shall continually be trained about their obligation to treat the information confidentially. If fax machines are used, they are considered to be less secure. It is important for any electronic system to log the transfer of data in order to account for release of information by and to appropriate individuals. Districts can use a variety of methods to safeguard the data, including encryption, passwords, and authentication programs or stamping it confidential.

6. How long is a consent to release information valid?

Since a consent to release information is only required for agencies other than education agencies, the consent is valid for one immediate release, unless specific duration dates are listed on the release.

7. What should the district do with records if a student is determined to be ineligible for special education services?

Those forms that document ineligibility become part of the permanent file and should be transferred with other school records.

F. Destruction of Records

Special education records shall be kept for at least 5 years according to the General Education Provisions Act (GEPA). FERPA allows districts to maintain permanent records of limited identifying information, such as a student's name, address, telephone number, grades, attendance record, courses, grade level completed, and year completed. A parent/adult student shall be informed when information is no longer needed to provide educational services and will be destroyed.

Commonly Asked Questions:

1. When can a district destroy special education records?

Special education records may be destroyed 5 years after the district no longer needs the information to provide special education services. GEPA regulations require districts receiving federal funds to retain records necessary for fiscal audit purposes and to show compliance with any federal regulations for 5 years after the use of sub-grant funds (Part B funds). Examples of the records to be maintained are the IEPs, Eligibility

Reports, Consent, and Written Notices. If a district intends to destroy records after the required 5 year time period, the parent and adult student shall be informed that the information is no longer needed and will be destroyed. A parent/adult student may request that the special education records be destroyed, in which the district shall destroy the records but after the 5 year time requirement.

2. Why should special education records be destroyed when they are no longer needed?

Record destruction is the best protection against improper and unauthorized disclosure. Record destruction also reduces management problems such as storage, maintenance, and retrieval.

3. What is the procedure for the destruction of special education records?

After 5 years, the district should document an attempt to inform a parent/adult student that special education records are no longer needed and that they will be destroyed. A letter to the parent/adult student needs to indicate that the records will be destroyed 45 days after the date of the notice. The parent/adult student should also be informed that he or she may need these records for other purposes in the future, such as determining Supplemental Security Income (SSI) eligibility. The district needs to document the date of destruction or the release of the records to a parent/adult student, when appropriate.

4. Who can destroy a special education record?

Districts need to designate a person to be responsible for record destruction.

5. How should records be destroyed?

Records need to be shredded and/or burned so they are no longer personally identifiable.

References:

Family Educational Rights and Privacy Act; Final Rule, 34 C.F.R. Part 99 (1995).

Idaho State Department of Education. (1989). *Guidelines for the management of student records*. Boise, ID: Author.

Transfer of Student Records Duties, Idaho Code 33-209 (1994).

National Center For Education Statistics, U. S. Department of Education. (1997). *Protecting the privacy of student records: Guidelines for education agencies*. Washington, DC: Author.

Family Policy Compliance Office, U. S. Department of Education and U. S. Department of Justice. (1997). *Sharing information: A guide to FERPA and participation in juvenile justice programs*. Washington, DC: Author.

Model Notification of Rights Under FERPA

The Family Educational Rights and Privacy Act (FERPA) afford parents and students over 18 years of age (“eligible students”) the following rights with respect to the student’s education records:

1. The right to inspect and review the student’s education records within 45 days of the day the district receives a request for access.

The parent or eligible student should submit to the school principal a written request that identifies the record(s) he or she wishes to inspect. The principal will make arrangements for access and notify the parent or eligible student of the time and place where the records may be inspected.

2. The right to request an amendment of the student’s education record that is believed to be inaccurate or misleading. The parent or eligible student should make a written request for an amendment of records to the school principal by clearly identifying the part of the record that needs to be changed and specifying why it is inaccurate or misleading. If the district decides not to amend the record as requested, the parent or eligible student will be notified of the decision and advised of the right to a district hearing regarding the request.

3. The right to consent to disclosures of personally identifiable information contained in the student’s education records, except to the extent that FERPA authorizes disclosure without consent.

One exception that permits disclosure without consent is to school officials with legitimate educational interests. A school official is a person employed by the district as an administrator, supervisor, teacher, or support staff member (including health staff and law enforcement personnel); a person serving on the board of trustees; a person or company that the district has contracted to perform a special task; or a parent or student serving on an official committee, such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks. A school official has a legitimate educational interest if the official needs to review an education record to fulfill his or her professional responsibility.

Upon request, the district will disclose education records without consent to officials of another school district in which a student seeks or intends to enroll.

4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the district to comply with the requirements of FERPA. The office that administers FERPA is:

Family Policy Compliance Office
U.S. Department of Education
600 Independence Avenue SW
Washington, DC 20202-4605

[NOTE: In addition, the district may want to include its required directory information public notice with its annual notification of rights.]

Destruction of Records (Sample Letter 1)

The district may send one of the following sample letters when the student graduates, completes the semester in which he or she attains the age of 21, is no longer eligible for special education, or when records are about to be destroyed.

February 12, 2007

Mr. and Mrs. John Doe
12345 Main St.
Last Chance, ID 67890

Dear Mr. and Mrs. Doe:

This letter is to notify you that the special education records that have been kept by Weteachem School District #007 on _____ (name of student) are no longer needed to provide educational services. Therefore, in compliance with local school board policy, these records will be destroyed in 5 years. Destruction of these records is the best protection against improper and unauthorized disclosure.

Please be aware that these records may be needed for social security benefits or for other purposes in the future. If you wish to review or acquire the file now for your own reference, please make your request in writing to the district administration office.

If you have any questions, please feel free to contact me at _____.

Sincerely,

Director of Special Education

Destruction of Records (Sample Letter 2)

February 12, 2007

Mr. and Mrs. John Doe
123 South Main
Last Time, ID 45678

Dear Mr. and Mrs. Doe:

The purpose of this letter is to notify you that the special education records that have been kept by Weteachem School District #007 on _____ (name of student) are no longer needed to provide educational services. Therefore, in compliance with local school board policy to destroy education records after 5 years, these records will be shredded in 45 days. Destruction of these records is the best protection against improper and unauthorized disclosure.

Please be aware that these records may be needed in the future for social security benefits or other purposes. If you desire to review the file or keep the file for your own records, please make your request to the administration office within 45 days. After that time, if we have not heard from you, these records will be destroyed.

If you have any questions, please contact me at _____.

Sincerely,

Director of Special Education

Using the Newspaper to Provide Notification of Destruction of Records

The district can also use the newspaper to try to notify individuals with disabilities who have left the district and have been withdrawn for more than five years that special education records will be destroyed. Best practice may include the distribution of Sample Letter 1 (see page A-166) when a student graduates or leaves the district *and* the annual posting of the following public notice in the newspaper.

Public Notice for Destruction of School Records

According to school board policy, the _____ School District #_____ hereby gives notice that special education records are no longer needed to provide educational services to individuals with disabilities who were enrolled in the district as a student prior to the year _____ and have since left the district. The district will destroy these special education records (by shredding them) in 45 days. Destruction of these records is the best protection against improper and unauthorized disclosure.

Please be aware that if you have special education records on file with the school district, these records may be needed for social security benefits or for other purposes in the future. If you wish to review the file or keep the file for your own records, please make the request to the administration office with 45 calendar days.

For further information contact the school district administration office. (Include contact information.)